



Michigan Nonprofit Association

**Testimony of Kelley Kuhn  
Interim President and CEO  
Michigan Nonprofit Association  
Before the  
Michigan Senate Insurance Committee  
January 29, 2013**

**Senate Bill 61**

*Blue Cross Blue Shield of Michigan Conversion--Michigan Health Endowment Fund*

The Honorable, Senator Joseph Hune  
Chairman, Senate Insurance Committee  
Michigan Senate

Dear Chairman Hune,

On behalf of the Michigan Nonprofit Association (MNA) and the more than 48,000 nonprofits in Michigan, I would like to thank you for holding this hearing.

**Michigan Nonprofit Association's Position**

MNA does not oppose the conversion of Blue Cross Blue Shield of Michigan being converted from a charitable organization to a nonprofit mutual insurer. However, with regard to Senate Bill 61 we have some concerns regarding how the "charitable assets" endowed by Michigan's residents would be managed under this legislation. The changes that are expanded upon below are intended to ensure the integrity of the management of these assets and build in assurances that the assets will be used with the original donor intent that led to BCBSM's establishment.

The new Michigan Health Endowment Fund (Fund) as currently envisioned in the Senate introduced legislation creates several issues which deserve further consideration.

**Testimony Regarding Senate Bill 61**

**ISSUE 1: THE INDISPENSABILTY OF OBTAINING 501(C)(3) STATUS**

The proposed legislation should be amended to require the Fund to obtain status as a charitable organization under Section 501(c)(3) of the Internal Revenue Code. As now drafted, the legislation gives sufficient flexibility to allow the Fund to be established as a civic or social welfare organization under Section 501(c)(4) of the Code. Section 501(c)(4) organizations have come under increased IRS scrutiny because many have been extremely active in political campaigns at the local, state and federal levels. Requiring the Fund to qualify as a 501(c)(3) organization will prevent it from engaging in unlimited public issue advocacy, specific legislative advocacy and engaging in political activities on behalf of or in opposition to candidates for public office.



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In addition, as a Section 501(c)(3) organization, the Fund would be subject to the oversight of the Michigan Attorney General under state law.

## **ISSUE 2: AN INADEQUATE CONFLICT OF INTEREST POLICY**

Second, the prior version of the bill included a prohibition to prevent an employee of an insurance carrier, producer, healthcare provider, third party administrator or one of their affiliates or subsidiaries from serving on the board of the Fund. MNA remains critical of the fact that the legislation would not prevent one or more lobbyists from BCBSM or BCBSM board members from being nominated to serve on the board. Our concern was that BCBSM management, through its influence with the Legislature, could exert significant ongoing control over the board of the Fund.

That provision has been replaced with a requirement that the board adopt a conflict of interest policy. It provides that a board member with an interest in any matter before the Fund must disclose that interest before the board takes action. The board must record the member's disclosure in the minutes.

If the board member or a family member or his organization would derive a direct and specific benefit from a decision of the board, that member must recuse themselves from the discussion and vote.

Although the new conflict of interest requirement was well-intentioned by casting a wider net in defining persons who may have a conflict of interest, it falls short of addressing industry standards in the nonprofit sector as well as fails to dispel possible collusion between separate entities. For instance, it does not prevent an employee, officer, or board member of BCBSM or a BCBSM lobbyist from serving on the Fund board. In addition, employees of insurance carriers, healthcare providers and third party administrators would not be prevented from serving on the board. This provision merely requires that any such person having a conflict of interest must recuse themselves from the discussion and vote where they or their organization would derive a direct and specific benefit from a decision of the board.

Thus, MNA would recommend that the language be amended to declare certain persons with conflicts of interest as ineligible from serving on the board so as to preserve the independence of the Fund beyond the control of BCBSM, including lobbyists of BCBSM, employees of BCBSM and board members of BCBSM.

Respectfully,

Kelley Kuhn  
Interim President & CEO  
Michigan Nonprofit Association